U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11283636

Date: MAY 24, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mechanical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition and subsequently affirmed that decision on motion, concluding that although the Petitioner qualified for the underlying EB-2 visa classification, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1]

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

[1] The Director granted the Petitioner's motion to reopen the matter, but after review of her additional evidence and arguments, determined that she had not established eligibility for a national interest waiver.

> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[3], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign

---

[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[3] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[4]

II. ANALYSIS

The Director found that the Petitioner qualified for the underlying EB-2 visa classification. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien." The Director's decisions both stated that the Petitioner "did not provide the required Form ETA 750 Part B." In response to the Director's request for evidence (RFE), however, the Petitioner offered a properly signed and executed Form ETA-750B dated September 30, 2019. Accordingly, the Director's determination on this issue is withdrawn. However, for the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated that she intends to continue to work "as a Business Manager, with specialty in Technical Internal Audit, Facilities Management and Mechanical Engineering." She asserted that her proposed endeavor involves "client development, economic development and research capabilities for national and global businesses and corporat[ions] within the United States in order to maximize the earning potential of the companies."

The Director issued an RFE asking the Petitioner to provide "a detailed description of the proposed endeavor" and why it is of substantial merit and national importance. In response, the Petitioner asserted that she "is an expert in the field of HVAC engineering" and has "acquired a broad knowledge in HVAC systems' installations, testing, commissioning and maintenance." She further contended that she has "designed and executed hundreds of projects across different buildings and applications such as residential buildings, high rise buildings, commercial buildings, hospitals and sports stadiums." In addition, the Petitioner mentioned her previous HVAC work involving both the [redacted] Stadium and [redacted] Stadium in Qatar.[5]

The Petitioner's RFE response included a document from [redacted] indicating that she was scheduled to be interviewed for a "Product Review Engineer" position on March 29, 2019. Additionally, she provided information about Science, Technology, Engineering, and Mathematics (STEM) occupations and

[4] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[5] The Petitioner's knowledge, skills, and experience in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake in the United States has national importance under *Dhanasar*'s first prong.

outdoor HVAC systems. The Petitioner also offered a research article, entitled [redacted] that was published in *Sustainable Cities and Society*.[6]

In the November 2019 decision denying the petition, the Director acknowledged the Petitioner's intention to work in the United States as an HVAC mechanical engineer, but concluded that she had not shown that her proposed endeavor stands to have broader implications in the field of mechanical engineering. The Director further stated that the Petitioner had not sufficiently clarified "what work you propose to do in the United States, where, and in what capacity."[7]

On motion, the Petitioner presented a December 2019 letter from [redacted] offering her the position of HVAC Engineer. Her duties for this company include "managing projects, HVAC System selection, duct and piping design, energy compliance (title-24) and energy efficiency knowledge. Attend client meetings, site visits and site inspections."[8] The Petitioner reiterated that her "endeavor is to work in the field of 'HVAC Mechanical Engineering.'"

In the decision affirming his denial of the petition, the Director concluded that the Petitioner had not demonstrated that her proposed work as an HVAC engineer, supporting her company's products and clients, was sufficient to meet the first prong of the *Dhanasar* framework. The Director stated that the record did "not demonstrate an endeavor which offers broader implications for the field, will further human knowledge, or offer[s] significant economic impact for the nation."

On appeal, the Petitioner asserts that she is a Mechanical Engineer specializing in the field of HVAC engineering. She contends that she intends "to continue to apply for suitable positions in my field," but she does not identify the specific HVAC projects she plans to undertake in the United States.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's statements reflect her intention to provide HVAC engineering services for her prospective

[6] This research article discusses thermal comfort systems for [redacted] and presents potential cooling strategies. The Petitioner, however, did not author the article. Nor does the record indicate that the Petitioner has published her own research findings in engineering journals or conference proceedings.

[7] In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

[8] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

U.S. employer and its clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her employer and its clientele to impact the mechanical engineering field or HVAC industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's marketing projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver.[9]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[9] Regarding the Director's discussion of Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, we adopt and affirm the Director's November 13, 2019 decision on those issues. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).